

DISTRICT OF NEVADA

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Doc. #94.¹ The United States filed an opposition (Doc. #105) to which Quassani replied (Doc. #106).

I. Facts and Procedural History

On November 29, 2011, Quassani was charged in a five (5) count criminal indictment with one (1) count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349; two (2) counts of wire fraud in violation 18 U.S.C. § 1343; and two (2) counts of mail fraud in violation of 18 U.S.C. § 1341. Doc. #1. On July 10, 2013, after a jury trial, Quassani was convicted of all five counts. Doc. #89. Thereafter, Quassani filed the present motion for a new trial. Doc. #94.

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¹ Refers to the court's docket number.

1 **II. Discussion**

2 Pursuant to Federal Rule of Criminal Procedure 33, upon a criminal defendant's motion,
3 "the court may vacate any judgment and grant a new trial if the interest of justice so requires."
4 FED. R. CRIM. P. 33(a).

5 In his motion, Quassani argues that his counsel was constitutionally ineffective at trial, and
6 therefore, he is entitled to a new trial. *See* Doc. #94. However, "[t]he customary procedure for
7 challenging the effectiveness of defense counsel in a federal criminal trial is by collateral attack on
8 the conviction under 28 U.S.C. § 2255." *United States v. Birges*, 723 F.2d 666, 670 (9th Cir. 1984);
9 *see also United States v. Mendoza*, 484 Fed. Appx. 101, 103 (9th Cir. 2012) (affirming denial of
10 new trial motion based on ineffective assistance of counsel claim because "the proper vehicle for
11 this claim is a 28 U.S.C. § 2255 motion."). This is because only a collateral proceeding "permits
12 the district judge first to decide whether the claim has merit, and second, if it does, to develop a
13 record as to what counsel did, why it was done, and what, if any, prejudice resulted." *United States*
14 *v. Molina*, 934 F.2d 1440, 1446 (9th Cir. 1991).

15 Here, there is no record before the court as to what considerations led Quassani's trial
16 counsel to contemplate the challenged trial strategy or to stipulate to certain facts. Given the
17 centrality of counsel's strategies to Quassani's ineffective assistance claim, the court finds that this
18 claim is more appropriately addressed under 28 U.S.C. § 2255. Accordingly, the court shall deny
19 the motion for a new trial.

20 IT IS THEREFORE ORDERED that defendant's motion for a new trial (Doc. #94) is
21 DENIED.

22 IT IS SO ORDERED.

23 DATED this 8th day of October, 2013.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE